

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IBM CREDIT CORPORATION,

Plaintiff,

vs

Case No: 03-70944  
Honorable Victoria A. Roberts

GVCINET, LLC. and KIRKLAND DUDLEY,

Defendant.

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**ORDER**

**I. INTRODUCTION**

This matter is before the Court on Defendants' Motion for Relief from Judgment Under FED. R. CIV. P. 60(B)(5) and (6). For the reasons stated below, the Court **DENIES** Defendants' motion.

**II. BACKGROUND**

IBM Credit Corporation ("Plaintiff") filed a Complaint against GVCINET, LLC and Kirkland Dudley ("Defendants") for breach of contract on March 7, 2003. On May 4, 2004, this Court entered Judgment in favor of Plaintiff and against Defendants in the amount of \$415,000. Two years later, Defendants filed a Motion for Relief from Judgment requesting a legal set-off in the amount of \$550,000.

Defendants argue that they are entitled to a set-off because "GVCINET through a third party entity, GlobalView, paid Plaintiff or Plaintiff's partner IBM \$550,000 toward the contract which included or should have included the equipment which is subject to

this judgment.” (¶10 of motion). Further, Defendants say they have attempted to resolve this matter in good faith with Plaintiff. However, Plaintiff seeks to execute the judgment without the set-off amount.

Notably, Defendants do not provide any evidence in support of their claim.

### **III. ANALYSIS**

Defendants bring its motion pursuant to Federal Rule of Civil Procedure 60(b), which provides:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, . . . , or its no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

FED. R. CIV. P. 60(b)(5) and (6).

In *Johnson v. Unknown Dellatifa*, 357 F.3d 539, \*543 (C.A.6 2004), the Sixth Circuit stated: “Relief from a judgment pursuant to Rule 60(b)(6) “is appropriate to accomplish justice in an extraordinary situation . . . .” (citing *Overbee v. Van Waters & Rogers*, 765 F.2d 578, 580 (6th Cir.1985)). Trial courts have broad discretion in granting relief under Rule 60(b)(6) and such relief is warranted “only in exceptional circumstances.” *Id.*

Defendants contend that these pre-judgment payments made to Plaintiff encompass the equipment which was the subject of the Court’s Order and, therefore, should be deducted from the judgment. Plaintiff argues that it is entitled to execute the judgment, as is, because Defendants’ claim of legal set-off in the amount of \$550,000 was raised in Defendants’ Answer and Special Affirmative Defenses and previously considered by the Court.

At the time the judgment was entered in favor of Plaintiff, the Court was aware of and did consider the alleged \$550,000 set-off. Defendants raise the same issue without setting forth the nature or extent of its payments or explaining why the Court should deduct \$550,000 from the judgment. Defendants did not provide any evidence or a substantive basis for the relief they seek.

Accordingly, the Court finds that Defendants have not demonstrated exceptional or extraordinary circumstances. It would be inappropriate to grant relief from a judgment entered over two years ago.

The Court **DENIES** Defendants' motion.

/s/ Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: February 6, 2007

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on February 6, 2007.

s/Linda Vertriest  
Deputy Clerk